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12 *Attorneys for Plaintiffs*

13  
14 IN THE UNITED STATES DISTRICT COURT

15 FOR THE DISTRICT OF ARIZONA

16  
17 Ryan Cox, individually and on behalf of all  
others similarly situated,

18 Plaintiff,

19 vs.

20 CoinMarketCap OpCo, LLC, Binance  
Capital Management Co., Ltd. d/b/a Binance  
and Binance.com, BAM Trading Services  
Inc. d/b/a Binance.US, Changpeng Zhao,  
Catherine Coley, Yi He, Ted Lin, and Does  
I-X;

25 Defendants.

18 Case No.: 3:21-cv-08197-SMB

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28 **PLAINTIFFS' MOTION FOR  
RECONSIDERATION OF MINUTE  
ENTRY ORDER TERMINATING  
DEFENDANTS BINANCE AND  
COINMARKETCAP FOR NON-  
SERVICE**

29 Plaintiff, Ryan Cox *et al.*, by and through his attorneys, Arno Naeckel and the  
Davillier Law Group LLC, moves this Honorable Court to reconsider its minute order

1 of December 16, 2021, Docket Entry #34, terminating defendants Binance Capital  
2 Management Co., Ltd. (“Binance”) and CoinMarketCap OpCo LLC  
3 (“CoinMarketCap”) for nonservice pursuant to the Court’s order of September 16, 2021  
4 and Fed. R. Civ. P. 4(m), based upon the argument below:

## 6 FACTS

7 On October 13, 2021, CoinMarketCap OpCo, LLC was served by Plaintiffs  
8 pursuant to Fed. R. Civ. P. 4 by service upon Corporation Service Company, designated  
9 by law to accept service of process on their behalf. Exhibit A, *Proof of Service –*  
10 *CoinMarketCap OpCo, LLC.*

12 On November 3, 2021, Binance was served by Plaintiffs pursuant to Fed. R. Civ.  
13 P. 4 by service upon ICS Corporate Services (BVI) Limited, designated by law to  
14 accept service of process on their behalf. Exhibit B, *Proof of Service – Binance Capital*  
15 *Management Co., Ltd.*

18 On November 3, 2021, counsel for CoinMarketCap and Binance entered into a  
19 joint stipulation with counsel for Defendant BAM Trading Services Inc. d/b/a Binance.US  
20 and counsel for Plaintiffs as to the timing of the response to the Plaintiffs’ complaint by  
21 these three defendants. [DE 16] pp. 2-3. This stipulation was signed by counsel for  
22 Binance and CoinMarketCap OpCo LLC (as well as by counsel for Binance.US). Via this  
23 joint stipulation, the parties further acknowledged that the only remaining unserved  
24 defendants at that time were Changpeng Zhao, Catherine Coley, Yi He, and Ted Lin. *Id.*  
25 1:8-10, 18-20. Pursuant to this stipulation, the Court entered an Order requiring  
26 Defendants Binance and CoinMarketCap to respond to the Complaint within 60 days after  
27 Defendants Binance and CoinMarketCap to respond to the Complaint within 60 days after

1 service on the remaining unserved defendants was completed. [DE 17] 1:20-24. Because  
2 of this joint stipulation and the resulting Order, Plaintiffs believed, apparently erroneously,  
3 that filing proof of service was unnecessary for these defendants.  
4

## 5 **LEGAL STANDARD**

6 On motion or on its own, “The court may correct a clerical mistake or a mistake  
7 arising from oversight or omission whenever one is found in a judgment, order, or other  
8 part of the record.” Fed. R. Civ. P. 60(a). On motion, a court may relieve a party from a  
9 final judgment or order for “mistake, inadvertence, surprise, or excusable neglect.” Fed.  
10 R. Civ. P. 60(b)(1). A motion under this rule must be made “within a reasonable time”  
11 and “no more than a year” after the entry of the order. Fed. R. Civ. P. 60(c)(1). Service  
12 under Rule 4 is “a flexible rule that should be liberally construed so long as a party  
13 receives sufficient notice of the complaint.” *Scott v. Sebelius*, 379 F. App'x 603, 604  
14 (9th Cir. 2010) (internal citation omitted).  
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## 17 **ARGUMENT**

18 Plaintiffs properly served defendants Binance and CoinMarketCap within the  
19 period of time set by this Court for service. In recognition of the sufficiency of this  
20 notice, both corporate entities that were terminated for non-service negotiated and  
21 signed a joint stipulation by counsel, and therefore appeared in this action pursuant to  
22 LRCiv 83.3(a). They were then ordered by the Court to respond to the Complaint.  
23 Plaintiffs inadvertently failed to file the proofs of service pursuant to this Court’s Order,  
24 but have approached the Court with proof within a reasonable time of the discovery of  
25 their mistake—a few days. Plaintiffs therefore respectfully request that this Court  
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reconsider its minute order of December 16, 2021, Docket Entry #34, and readmit defendants Binance and CoinMarketCap to the case so that litigation may proceed in the interest of justice.

Respectfully submitted this 20th day of December, 2021.

/s/ Arno Naeckel  
Arno Naeckel  
DAVILLIER LAW GROUP, LLC  
3443 N. Central Ave. Ste 1009  
Phoenix, AZ 85012

1                   **CERTIFICATE OF COMPLIANCE**

2 I hereby certify that this Motion, which is 4 pages, does not exceed the page limit set  
3 forth by LRCiv 7.2(e)(1) of 17 pages.  
4

5                   Dated this 20th day of December, 2021.

6                   /s/ Arno Naeckel  
7                   Arno Naeckel  
8                   DAVILLIER LAW GROUP, LLC  
9                   3443 N. Central Ave. Ste 1009  
10                  Phoenix, AZ 85012

1                   **CERTIFICATE OF SERVICE**

2 I hereby certify that on December 20th, 2021, I electronically submitted the foregoing  
3 document to the Clerk's Office using the CM/ECF system for filing and transmittal of a  
4 Notice of Electronic Filing to the CM/ECF registrants on record.

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7                   Dated this 20th day of December, 2021.  
8

9                   /s/ Arno Naeckel  
10                  Arno Naeckel  
11                  DAVILLIER LAW GROUP, LLC  
12                  3443 N. Central Ave. Ste 1009  
13                  Phoenix, AZ 85012  
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## EXHIBIT A

Proof of Service – CoinMarketCap OpCo, LLC

Civil Action No. 3:21-cv-08197-SMB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for (*name of individual and title, if any*) CoinMarketCap OpCo, LLC  
 was received by me on (*date*) 10/12/2021.

I personally served the summons on the individual at (*place*) \_\_\_\_\_  
 \_\_\_\_\_ on (*date*) \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with (*name*) \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on (*date*) \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on (*name of individual*) CORPORATION SERVICE COMPANY, who is  
 designated by law to accept service of process on behalf of (*name of organization*) CoinMarketCap OpCo, LLC  
 \_\_\_\_\_ on (*date*) 10/13/2021; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other (*specify*): \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ 200 for services, for a total of \$ 200.

I declare under penalty of perjury that this information is true.

Date: 10/14/2021
christina song  
*Server's signature*
Christina Song, Private Process Server
*Printed name and title*

 101 Poplar St  
 Philadelphia, PA 19123

*Server's address*

Additional information regarding attempted service, etc:

Wed 10/13/2021 03:08 PM at 251 Little Falls Dr Wilmington, DE 19808: I delivered the documents to CORPORATION SERVICE COMPANY, REGISTERED AGENT with identity confirmed by subject stating their name. The individual accepted service with direct delivery. The individual appeared to be a black-haired black male contact 5'8"-5'10" tall and weighing 160-180 lbs.

## EXHIBIT B

Proof of Service – Binance Capital Management Co., Ltd.



Civil Action No. 3:321-CV-08197-SMB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This summons for Binance Capital Management d/b/a Binance and/or Binance.com C/O Ms. Sarah Li ICS Corporate Services (BVI) Limited was received by me on November 2, 2021.

Documents: **Summons in a Civil Action Complaint**

Service Address: **PO Box 116 Road Town**

**Tortola, BV VG1110**

I personally served the above documents on the individual at (address) on (date/time)

I left the summons at the individual's residence or usual place of abode with Alicia Davis - Officer of the company/authorized to accept, a person of suitable age and discretion who resides there, on , and mailed a copy to the individual's last known address; or

I served the summons to **Alicia Davis - Officer of the Company/Authorized to accept**, who is designated by law to accept service of process on behalf of **Binance Capital Management d/b/a Binance and/or Binance.com C/O Ms. Sarah Li ICS Corporate Services (BVI) Limited** on **November 3, 2021 9:14 AM**

I returned the summons unexecuted because ; or

other (specify):

*My fees are \$ .00 for travel and \$ 1,500.00 for services, for a total of \$ 1,500.00*

*I declare under penalty of perjury under the laws of the The State of California that this information is true.*

Date: **November 3, 2021**

*Dervin Stoutt*

*Server's signature*

*Additional information regarding attempted service, etc:*

**Dervin Stoutt**

*Printed name and title*

*REG #, County of*

**555 ANTON BLVD STE 150, COSTA MESA, CA 92626**

*Server's Address*